

STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

## TEXKHAN, INC.,

Plaintiff,

V.

K & L WHOLESALES CORP.; *et al.*,

## Defendants.

Case No. CV18-02634-MWF-GJSx

[PROPOSED] STIPULATED  
PROTECTIVE ORDER<sup>1</sup>

## 1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this

<sup>1</sup> This Stipulated Protective Order is substantially based on the model protective order provided under Magistrate Judge Gail J. Standish's Procedures.

1 Order does not confer blanket protections on all disclosures or responses to  
2 discovery and that the protection it affords from public disclosure and use extends  
3 only to the limited information or items that are entitled to confidential treatment  
4 under the applicable legal principles.

5 **B. GOOD CAUSE STATEMENT**

6 This action is likely to involve trade secrets, customer and pricing lists and  
7 other valuable research, development, commercial, financial, technical and/or  
8 proprietary information for which special protection from public disclosure and  
9 from use for any purpose other than prosecution of this action is warranted. Such  
10 confidential and proprietary materials and information consist of, among other  
11 things, confidential business or financial information, information regarding  
12 confidential business practices, or other confidential research, development, or  
13 commercial information (including information implicating privacy rights of third  
14 parties), information otherwise generally unavailable to the public, or which may be  
15 privileged or otherwise protected from disclosure under state or federal statutes,  
16 court rules, case decisions, or common law. Accordingly, to expedite the flow of  
17 information, to facilitate the prompt resolution of disputes over confidentiality of  
18 discovery materials, to adequately protect information the parties are entitled to keep  
19 confidential, to ensure that the parties are permitted reasonable necessary uses of  
20 such material in preparation for and in the conduct of trial, to address their handling  
21 at the end of the litigation, and serve the ends of justice, a protective order for such  
22 information is justified in this matter. It is the intent of the parties that information  
23 will not be designated as confidential for tactical reasons and that nothing be so  
24 designated without a good faith belief that it has been maintained in a confidential,  
25 non-public manner, and there is good cause why it should not be part of the public  
26 record of this case.

27 **C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL**

28

1        The parties further acknowledge, as set forth in Section 12.3, below, that this  
2 Stipulated Protective Order does not entitle them to file confidential information  
3 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed  
4 and the standards that will be applied when a party seeks permission from the court  
5 to file material under seal.

6        There is a strong presumption that the public has a right of access to judicial  
7 proceedings and records in civil cases. In connection with non-dispositive motions,  
8 good cause must be shown to support a filing under seal. *See Kamakana v. City and*  
9 *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors*  
10 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electrics,*  
11 *Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders  
12 require good cause showing), and a specific showing of good cause or compelling  
13 reasons with proper evidentiary support and legal justification, must be made with  
14 respect to Protected Material that a party seeks to file under seal. The parties' mere  
15 designation of Disclosure or Discovery Material as CONFIDENTIAL does not—  
16 without the submission of competent evidence by declaration, establishing that the  
17 material sought to be filed under seal qualifies as confidential, privileged, or  
18 otherwise protectable—constitute good cause.

19        Further, if a party requests sealing related to a dispositive motion or trial, then  
20 compelling reasons, not only good cause, for the sealing must be shown, and the  
21 relief sought shall be narrowly tailored to serve the specific interest to be protected.  
22 *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir. 2010). For  
23 each item or type of information, document, or thing sought to be filed or introduced  
24 under seal in connection with a dispositive motion or trial, the party seeking  
25 protection must articulate compelling reasons, supported by specific facts and legal  
26 justification, for the requested sealing order. Again, competent evidence supporting  
27 the application to file documents under seal must be provided by declaration.

28        Any document that is not confidential, privileged, or otherwise protectable in

1 its entirety will not be filed under seal if the confidential portions can be redacted.  
2 If documents can be redacted, then a redacted version for public viewing, omitting  
3 only the confidential, privileged, or otherwise protectable portions of the document,  
4 shall be filed. Any application that seeks to file documents under seal in their  
5 entirety should include an explanation of why redaction is not feasible.

6 2. DEFINITIONS

7 2.1 Action: This federal lawsuit pending in the Central District of  
8 California - *Texkhan, Inc. v. K & L Wholesales Corp.; et al.* Case No. CV18-02634-  
9 MWF-GJS.

10 2.2 Challenging Party: a Party or Non-Party that challenges the  
11 designation of information or items under this Order.

12 2.3 “CONFIDENTIAL” Information or Items: information (regardless of  
13 how it is generated, stored or maintained) or tangible things that qualify for  
14 protection under Federal Rule of Civil Procedure 26(c), and as specified above in  
15 the Good Cause Statement.

16 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as  
17 their support staff).

18 2.5 Designating Party: a Party or Non-Party that designates information or  
19 items that it produces in disclosures or in responses to discovery as  
20 “CONFIDENTIAL.”

21 2.6 Disclosure or Discovery Material: all items or information, regardless  
22 of the medium or manner in which it is generated, stored, or maintained (including,  
23 among other things, testimony, transcripts, and tangible things), that are produced or  
24 generated in disclosures or responses to discovery in this matter.

25 2.7 Expert: a person with specialized knowledge or experience in a matter  
26 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
27 an expert witness or as a consultant in this Action.

28 2.8 House Counsel: attorneys who are employees of a party to this Action.

House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.9 Non-Party: any natural person, partnership, corporation, association or other legal entity not named as a Party to this action.

2.10 Outside Counsel of Record: attorneys who are not employees of a party to this Action but are retained to represent or advise a party to this Action and have appeared in this Action on behalf of that party or are affiliated with a law firm that has appeared on behalf of that party, and includes support staff.

2.11 Party: any party to this Action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this Action.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.14 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL.”

2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

### 3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

1 Any use of Protected Material at trial shall be governed by the orders of the  
2 trial judge. This Order does not govern the use of Protected Material at trial.

3 4. **DURATION**

4 Once a case proceeds to trial, information that was designated as  
5 CONFIDENTIAL or maintained pursuant to this protective order used or introduced  
6 as an exhibit at trial becomes public and will be presumptively available to all  
7 members of the public, including the press, unless compelling reasons supported by  
8 specific factual findings to proceed otherwise are made to the trial judge in advance  
9 of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause”  
10 showing for sealing documents produced in discovery from “compelling reasons”  
11 standard when merits-related documents are part of court record). Accordingly, the  
12 terms of this protective order do not extend beyond the commencement of the trial.

13 5. **DESIGNATING PROTECTED MATERIAL**

14 5.1 **Exercise of Restraint and Care in Designating Material for Protection.**  
15 Each Party or Non-Party that designates information or items for protection under  
16 this Order must take care to limit any such designation to specific material that  
17 qualifies under the appropriate standards. The Designating Party must designate for  
18 protection only those parts of material, documents, items or oral or written  
19 communications that qualify so that other portions of the material, documents, items  
20 or communications for which protection is not warranted are not swept unjustifiably  
21 within the ambit of this Order.

22 Mass, indiscriminate or routinized designations are prohibited. Designations  
23 that are shown to be clearly unjustified or that have been made for an improper  
24 purpose (e.g., to unnecessarily encumber the case development process or to impose  
25 unnecessary expenses and burdens on other parties) may expose the Designating  
26 Party to sanctions.

27 If it comes to a Designating Party’s attention that information or items that it  
28 designated for protection do not qualify for protection, that Designating Party must

1 promptly notify all other Parties that it is withdrawing the inapplicable designation.

2       5.2    Manner and Timing of Designations. Except as otherwise provided in  
3 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
4 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
5 under this Order must be clearly so designated before the material is disclosed or  
6 produced.

7           Designation in conformity with this Order requires:

8           (a) for information in documentary form (e.g., paper or electronic  
9 documents, but excluding transcripts of depositions or other pretrial or trial  
10 proceedings), that the Producing Party affix at a minimum, the legend  
11 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that  
12 contains protected material. If only a portion of the material on a page qualifies for  
13 protection, the Producing Party also must clearly identify the protected portion(s)  
14 (e.g., by making appropriate markings in the margins).

15          A Party or Non-Party that makes original documents available for inspection  
16 need not designate them for protection until after the inspecting Party has indicated  
17 which documents it would like copied and produced. During the inspection and  
18 before the designation, all of the material made available for inspection shall be  
19 deemed “CONFIDENTIAL.” After the inspecting Party has identified the  
20 documents it wants copied and produced, the Producing Party must determine which  
21 documents, or portions thereof, qualify for protection under this Order. Then,  
22 before producing the specified documents, the Producing Party must affix the  
23 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a  
24 portion of the material on a page qualifies for protection, the Producing Party also  
25 must clearly identify the protected portion(s) (e.g., by making appropriate markings  
26 in the margins).

27           (b) for testimony given in depositions that the Designating Party identifies  
28 the Disclosure or Discovery Material on the record, before the close of the

1 deposition all protected testimony.

2 (c) for information produced in some form other than documentary and  
3 for any other tangible items, that the Producing Party affix in a prominent place on  
4 the exterior of the container or containers in which the information is stored the  
5 legend “CONFIDENTIAL.” If only a portion or portions of the information  
6 warrants protection, the Producing Party, to the extent practicable, shall identify the  
7 protected portion(s).

8 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
9 failure to designate qualified information or items does not, standing alone, waive  
10 the Designating Party’s right to secure protection under this Order for such material.  
11 Upon timely correction of a designation, the Receiving Party must make reasonable  
12 efforts to assure that the material is treated in accordance with the provisions of this  
13 Order.

14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
16 designation of confidentiality at any time that is consistent with the Court’s  
17 Scheduling Order.

18 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
19 resolution process under Local Rule 37.1 et seq.

20 6.3 The burden of persuasion in any such challenge proceeding shall be on  
21 the Designating Party. Frivolous challenges, and those made for an improper  
22 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
23 parties) may expose the Challenging Party to sanctions. Unless the Designating  
24 Party has waived or withdrawn the confidentiality designation, all parties shall  
25 continue to afford the material in question the level of protection to which it is  
26 entitled under the Producing Party’s designation until the Court rules on the  
27 challenge.

1      7. ACCESS TO AND USE OF PROTECTED MATERIAL

2      7.1 Basic Principles. A Receiving Party may use Protected Material that is  
3      disclosed or produced by another Party or by a Non-Party in connection with this  
4      Action only for prosecuting, defending or attempting to settle this Action. Such  
5      Protected Material may be disclosed only to the categories of persons and under the  
6      conditions described in this Order. When the Action has been terminated, a  
7      Receiving Party must comply with the provisions of section 13 below (FINAL  
8      DISPOSITION).

9      Protected Material must be stored and maintained by a Receiving Party at a  
10     location and in a secure manner that ensures that access is limited to the persons  
11     authorized under this Order.

12     7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
13     otherwise ordered by the court or permitted in writing by the Designating Party, a  
14     Receiving Party may disclose any information or item designated  
15     “CONFIDENTIAL” only to:

16         (a) the Receiving Party’s Outside Counsel of Record in this Action, as  
17         well as employees of said Outside Counsel of Record to whom it is reasonably  
18         necessary to disclose the information for this Action;

19         (b) the officers, directors, and employees (including House Counsel) of  
20         the Receiving Party to whom disclosure is reasonably necessary for this Action;

21         (c) Experts (as defined in this Order) of the Receiving Party to whom  
22         disclosure is reasonably necessary for this Action and who have signed the  
23         “Acknowledgment and Agreement to Be Bound” (Exhibit A);

24         (d) the court and its personnel;

25         (e) court reporters and their staff;

26         (f) professional jury or trial consultants, mock jurors, and Professional  
27         Vendors to whom disclosure is reasonably necessary for this Action and who have  
28         signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as "CONFIDENTIAL," that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this

1 action as “CONFIDENTIAL” before a determination by the court from which the  
2 subpoena or order issued, unless the Party has obtained the Designating Party’s  
3 permission. The Designating Party shall bear the burden and expense of seeking  
4 protection in that court of its confidential material and nothing in these provisions  
5 should be construed as authorizing or encouraging a Receiving Party in this Action  
6 to disobey a lawful directive from another court.

7 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**  
8 **PRODUCED IN THIS LITIGATION**

9 (a) The terms of this Order are applicable to information produced by a  
10 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information  
11 produced by Non-Parties in connection with this litigation is protected by the  
12 remedies and relief provided by this Order. Nothing in these provisions should be  
13 construed as prohibiting a Non-Party from seeking additional protections.

14 (b) In the event that a Party is required, by a valid discovery request, to  
15 produce a Non-Party’s confidential information in its possession, and the Party is  
16 subject to an agreement with the Non-Party not to produce the Non-Party’s  
17 confidential information, then the Party shall:

18 (1) promptly notify in writing the Requesting Party and the Non-Party  
19 that some or all of the information requested is subject to a confidentiality  
20 agreement with a Non-Party;

21 (2) promptly provide the Non-Party with a copy of the Stipulated  
22 Protective Order in this Action, the relevant discovery request(s), and a reasonably  
23 specific description of the information requested; and

24 (3) make the information requested available for inspection by the  
25 Non-Party, if requested.

26 (c) If the Non-Party fails to seek a protective order from this court within  
27 14 days of receiving the notice and accompanying information, the Receiving Party  
28 may produce the Non-Party’s confidential information responsive to the discovery

1 request. If the Non-Party timely seeks a protective order, the Receiving Party shall  
2 not produce any information in its possession or control that is subject to the  
3 confidentiality agreement with the Non-Party before a determination by the court.  
4 Absent a court order to the contrary, the Non-Party shall bear the burden and  
5 expense of seeking protection in this court of its Protected Material.

6 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

7 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
8 Protected Material to any person or in any circumstance not authorized under this  
9 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
10 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts  
11 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or  
12 persons to whom unauthorized disclosures were made of all the terms of this Order,  
13 and (d) request such person or persons to execute the “Acknowledgment and  
14 Agreement to Be Bound” that is attached hereto as Exhibit A.

15 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
16 **PROTECTED MATERIAL**

17 When a Producing Party gives notice to Receiving Parties that certain  
18 inadvertently produced material is subject to a claim of privilege or other protection,  
19 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
20 Procedure 26(b)(5)(B). This provision is not intended to modify whatever  
21 procedure may be established in an e-discovery order that provides for production  
22 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and  
23 (e), insofar as the parties reach an agreement on the effect of disclosure of a  
24 communication or information covered by the attorney-client privilege or work  
25 product protection, the parties may incorporate their agreement in the stipulated  
26 protective order submitted to the court.

27 **12. MISCELLANEOUS**

28 12.1 Right to Further Relief. Nothing in this Order abridges the right of any

1 person to seek its modification by the Court in the future.

2           12.2 Right to Assert Other Objections. By stipulating to the entry of this  
3 Protective Order, no Party waives any right it otherwise would have to object to  
4 disclosing or producing any information or item on any ground not addressed in this  
5 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
6 ground to use in evidence of any of the material covered by this Protective Order.

7           12.3 Filing Protected Material. A Party that seeks to file under seal any  
8 Protected Material must comply with Local Civil Rule 79-5. Protected Material  
9 may only be filed under seal pursuant to a court order authorizing the sealing of the  
10 specific Protected Material at issue. If a Party's request to file Protected Material  
11 under seal is denied by the court, then the Receiving Party may file the information  
12 in the public record unless otherwise instructed by the court.

13           13. **FINAL DISPOSITION**

14           After the final disposition of this Action, as defined in paragraph 4, within 60  
15 days of a written request by the Designating Party, each Receiving Party must return  
16 all Protected Material to the Producing Party or destroy such material. As used in  
17 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
18 summaries, and any other format reproducing or capturing any of the Protected  
19 Material. Whether the Protected Material is returned or destroyed, the Receiving  
20 Party must submit a written certification to the Producing Party (and, if not the same  
21 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies  
22 (by category, where appropriate) all the Protected Material that was returned or  
23 destroyed and (2) affirms that the Receiving Party has not retained any copies,  
24 abstracts, compilations, summaries or any other format reproducing or capturing any  
25 of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
26 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing  
27 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert  
28 reports, attorney work product, and consultant and expert work product, even if such

1 materials contain Protected Material. Any such archival copies that contain or  
2 constitute Protected Material remain subject to this Protective Order as set forth in  
3 Section 4 (DURATION).

4 14. **VIOLATION**

5 Any violation of this Order may be punished by appropriate measures including,  
6 without limitation, contempt proceedings and/or monetary sanctions.

7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

8  
9 Dated: January 10, 2019 By: /s/ Justin M. Gomes  
10 Scott A. Burroughs, Esq.  
11 Trevor W. Barrett, Esq.  
12 Justin M. Gomes, Esq.  
13 DONIGER /BURROUGHS  
14 Attorneys for Plaintiff

15 Dated: January 10, 2019 By: /s/ S. Calvin Myung  
16 S. Calvin Myung, Esq.  
17 LAW OFFICES OF S. CALVIN MYUNG  
18 Attorneys for Defendants

19 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

20 DATED: January 10, 2019

21 

22  
23 GAIL J. STANDISH  
24 UNITED STATES MAGISTRATE JUDGE  
25  
26  
27  
28

**EXHIBIT A**

## ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [date] in the case of *Texkhan, Inc. v. K & L Wholesales Corp.; et al.* Case No. CV18-02634-MWF-GJS. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and  
telephone number] as my California agent for service of process in connection with  
this action or any proceedings related to enforcement of this Stipulated Protective  
Order.

Date:

City and State where sworn and signed:

Printed name:

Signature: